

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DUNCAN J. McNEIL, III,

Plaintiff,

vs.

UNITED STATES, et al.,

Defendants.

No. CV-05-263-AAM

ORDER OF DISMISSAL

This action was transferred here from the Western District of Texas pursuant to 28 U.S.C. §1404(a) (convenience of parties and witnesses and the interests of justice), although it is apparent that a transfer for improper venue pursuant to §1406(a) would also have been appropriate. It is one of many actions the plaintiff has filed in various districts nationwide in an attempt to circumvent pre-filing review orders entered by the undersigned and now an order which prohibits plaintiff from filing anything in the Eastern District of Washington unless accompanied by the appropriate filing fee.

The transfer order (Ct. Rec. 4) was filed in the Western District of Texas on August 10. On August 9 in CV-05-211-AAM (Ct. Rec. 8), the undersigned entered an order barring the plaintiff from filing any further actions in the Eastern District of Washington without payment of the appropriate filing fee. The allegation in plaintiff's proposed "First Amended Verified Complaint" that he is under imminent danger of serious physical injury does not persuade this

1 court to make an exception to its August 9 order requiring payment of the filing fee. In a bid to
2 gain in forma pauperis (IFP) status and to gain additional review of allegations regarding foreign
3 judgments and writs already found frivolous by this court, what the plaintiff has done in this
4 action, and in other actions filed in districts other than the Eastern District of Washington, is
5 include a conditions of confinement allegation. Proof enough of this is the allegation in the First
6 Amended Verified Complaint (Paragraph 1.05) that: "Plaintiff is presently under imminent danger
7 of serious physical injury, resulting directly from the defendant's acts of retaliation and
8 retribution, as a result of and taken to interfere with the plaintiff's lawful acts of execution and
9 enforcement of judgments." Furthermore, plaintiff's complaint does not name/identify Spokane
10 County or any Spokane County Jail officials as defendants. The plaintiff simply wanted the
11 Western District of Texas to reconsider his frivolous allegations regarding foreign judgments and
12 writs, notwithstanding the fact it is obvious that the Western District of Texas has absolutely
13 nothing to do with any of the plaintiff's claims.

14 Were this any other pro se prisoner plaintiff, this court might consider providing an
15 opportunity to submit an amended complaint alleging only a conditions of confinement claim and
16 if sufficient, grant IFP status. This, however, is not any other pro se prisoner plaintiff. Plaintiff's
17 track record of abusing the court system is a lengthy one and clearly established. Accordingly, if
18 plaintiff wants to assert a conditions of confinement claim, he will need to include that claim (and
19 that claim only) in a complaint accompanied by the \$250 filing fee.

20 Plaintiff will not be allowed to proceed IFP in the captioned matter. His Motion To
21 Proceed IFP (Ct. Rec. 1) is **DENIED** and this action is **DISMISSED with prejudice**. Plaintiff
22 will not be allowed to file anything further in the captioned matter with the exception of a "Notice
23 of Appeal" to the Ninth Circuit Court of Appeals. **This court certifies that any such appeal**
24 **taken is not taken in good faith.** 28 U.S.C. §1915(a)(3) and Fed. R. App. P. 24(a)(3)(A).

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1 **IT IS SO ORDERED.** The District Executive shall enter judgment accordingly and
2 forward a copy of the judgment and this order to plaintiff McNeil.

3 **DATED** this 19th of September, 2005.

4 s/ Alan A. McDonald
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6 ALAN A. McDONALD
7 Senior United States District Judge
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